

**IN THE HIGH COURT OF UTTARAKHAND, AT
NAINITAL**

**Government Appeal No. 1106/2001
(Old No. 2904/1986)**

State of U.P.

..Appellant.

Versus

1- Man Singh

2- Trilok Singh

3- Madho Singh,

4- Lal Singh

Sons of Soban Singh,

All R/o Village Ravalgaun, Patti Sukouli,

P.S. and Tehsil Pithoragarh,

District Pithoragarh

.. Respondents.

Sri Nandan Arya, learned A.G.A. for the appellant

Sri Lokendra Dobhal, learned counsel for the respondents.

Dated: Nov. 21, 2007

Hon'ble B.C. Kandpal, J.

This appeal U/S 378(3) of the Cr.P.C. has been preferred by the State against the judgment and order dated 28-7-1986, passed by Sessions Judge, Pithoragarh, in S.T. No. 15 of 1986, acquitting the accused/respondents U/Ss 307/394 I.P.C.

2- Brief facts of the case are that on 24.7.1985, the complainant Dalip Singh had come to Pithoragarh to attend the Court of S.D.M. in connection with a case U/S 107/116 Cr.P.C. In the evening, he returned to his village along with Govind Ram, Kamal Ram and Padam Singh. At about 7 P.M. when they reached near Manaria temple, accused Lal Singh and Trilok Singh emerged out from behind the bushes. Accused Man Singh and Madho Singh

armed with Lathis also came from behind. All the four accused ambushed the complainant. Accused Lal Singh and Trilok Singh pelted stones on him inflicting head injuries. When he fell down due to injuries accused Madho Singh and Man Singh wielded Lathis on him and caused injuries on his back and chest. On the intervention of Govind Ram and Kamal Ram, the assailants away believed him dead. They also took away Rs. 200/- and papers relating to weaker section house scheme. It is also the prosecution case that on raising alarm by Govind Ram and Kamal Ram, Lachi Ram, Hayat Singh and Rajendra reached there. They managed to bring the injured to the District Hospital, Pithoragarh, where the injured got written F.I.R., Ext. Ka.2 prepared by Deb Singh and sent it to Patti Patwari Sukoli Circle. Gopi Ram Patwari of the circle on the basis of written report, prepared chick F.I.R. Ext. Ka.5 and registered a case U/S 307/394 I.P.C. against the accused.

3- The injured was medically examined by Dr. M.D. Bhatt, P.W.1, in the night of 24/25-7-85 at 1.25 A.M. in the District Hospital, Pithoragarh and found the following injuries at his person”-

- 1- Lacerated wound over right side of forehead, 8cm above lip of right ear lobule (upper) side 4.5cmx 0.5cm skin deep margins irregular fresh blood present. Obliquely placed (transverse).
- 2- Contusion over right side of forehead 3cm above center of right upper eye brow size 3x2cm spherical in shape, reddish in colour.

- 3- Contusion swelling over right side of top of head (occip) size 6x5cm spherical in shape. Reddish in colour.
- 4- Abrasion over tip of nose vertically placed size 1.5cm x 0.1 cm, reddish in colour. Bleeding from nose present.
- 5- Multiple abraded contusion over right side of back in an area of 14x 12cm involving central part of midline, reddish in colour and varying in size and shape.
- 6- Abraded contusion over left shoulder tip-sized 6x 2cm reddish in colour ovalish in shape.
- 7- Swelling and tenderness in left hychoudrium size 8x6cm but no apparent injury observed.
- 8- Contusion over lateral side of right thigh centrally placed size 10x 4 cm vertically placed. Reddish in colour. Tenderness present.

4- Injury Nos. 3 and 7 were kept under observation. X-ray was taken under the supervision of Dr. V.N. Mehrotra. He disclosed the fracture of eighth rib beneath injury No.7.

5- The District Magistrate cancelled the charge sheet given by revenue police and entrusted the further investigation to the regular police. Thereafter, S.I. Banwari Lal Verma, investigated the case and submitted charge sheet Ext. Ka.9 against the accused Lal Singh and Trilok Singh U/Ss 307/394 I.P.C. Lateron accused Madho Singh and Man Singh surrendered in the Court and, therefore he submitted supplementary charge-sheet, Ext. Ka.10 against these two accused persons.

6- After committal of the case to the court of Sessions, the accused were charged U/S 307/34 and 394 I.P.C. They pleaded not guilty and claimed to be tried.

7- The prosecution examined six witnesses in support of its case. Of these, P.W.1, is Dr. M.D. Bhatt, who had medically examined the injured, P.W.2, Dalip Singh is the injured eyewitness, P.W.3, Dr. V.N. Mehrotra has given the x-ray report of the injured, P.W.4, Govind Ram is also the eyewitness of the occurrence and P.W.5 Gopi Ram and P.W.6 S.I. Banwari Lal have investigated the case.

8- The accused in their statements U/S 313 Cr.P.C. denied the allegation of the prosecution and alleged that prior to this incident the complainant had assaulted Lal accused on 2.5.1985 and the criminal complaint is yet pending for decision and due to this reason the complainant has planted this false case against them. The also produced D.W.1, Shyam Sundar Phulera, Reader of S.D.M. Court Pithoragarh in their defence.

9- The trial Court after considering the evidence adduced in the case and hearing learned counsel for the parties, acquitted the accused/respondents from the charges levelled against them.

10- Feeling aggrieved, the State has come up in appeal before this Court.

11- Heard learned counsel for the parties and perused the record.

12- The learned A.G.A. has argued that the complainant Dalip Singh had sustained as many as 8 injuries at the hands of accused/respondents, which included one lacerated wound, six contusions, and swelling and tenderness. The incident of marpit had been narrated by P.W.2, Dalip Singh and corroborated by P.W.4, Govind Ram, and the learned Sessions Judge has committed manifest error in not believing the prosecution case. The impugned judgment and order has no leg to stand in the eyes of law and hence liable to be set aside.

13- The learned counsel for the accused/respondents has opposed the submission raised by the learned A.G.A. and submitted that there was enmity between the parties and false case has been instituted against the accused/respondents by the complainant. The alleged eyewitnesses P.W.1, Dalip Singh and P.W.3, Govind Ram have not corroborated each other. The learned Sessions Judge has rightly acquitted the accused/respondents from the charges levelled against them.

14- It is the admitted case of the parties that accused Lal Singh had instituted a case on 3.5.85 against the complainant Dalip Singh and his witness Govind Ram which is pending in the Court of Judicial Magistrate. Further, on 24-6-85 accused Man Singh has also filed a case U/S 107/116 Cr.P.C. against the complainant. The defence also examined Shyam Sunder Phulera, Reader of the S.D.M. Court, Pithoragarh, who has stated that Criminal Case No.

89 of 85, U/S 107/116 Cr.P.C. Man Singh Vs. Dalip Singh and others is pending in the S.D.M. Court. He also alleged that on 21.7.85 Madho Singh also filed an application U/S 151 Cr.P.C. against Dalip Singh, Govind Ram, Padam Singh and others before S.D.M. Pithoragarh. From the above facts of the case it is quite clear that the parties in the case are at daggers drawn and there is every possibility of false implication of the accused/respondents.

15- In a case like this, the prosecution evidence is to be scrutinized cautiously. The prosecution has produced two alleged eyewitnesses of the incident. The first is injured P.W.2, Dalip Singh. Regarding participation of the accused/respondents in the commission of crime, he has alleged that when he reached near Manariya Temple, accused Trilok Singh and Lal Singh came out inside the bushes from front side and accused Madho Singh and Man Singh came from behind and ambushed him, whereas the other eyewitness examined in the case, P.W.4, Govind Ram has alleged that the accused Madho Singh who was hidden by the side of the way, suddenly came out and caught hold of Dalip Singh by his neck. Thereafter, accused Man Singh came out from the hidden place and gave lathi blow at the head of Dalip Singh. Then accused Trilok Singh and Lal Singh also reached there and they assaulted Dalip Singh with stones. Therefore, both these witnesses have given totally a different version with regard to arrival of the accused/respondents at the spot and assaulting the complainant Dalip Singh. Complainant alleged that Trilok Singh and Lal Singh came out from the bushes at the first instance, whereas Govind Ram

alleged that Modho Singh alone came at the first instance and caught hold of Dalip Singh by his neck and then Man Singh came there and assault him with Lathi at his head and then the remaining two persons Trilok Singh and Lal Singh reached there. P.W.2, Dalip Singh in his examination-in-chief had made a vague statement that the accused persons has looted the cash from his pocket and his household goods and Govt. papers kept inside a bag. This part of prosecution story do not find place in the statement of P.W.4, Govind Ram. Recovery of the alleged looted items has not been made and the statement of Dalip Singh on the point appears to be exaggerated one and the same adversely affects his other part of statement with regard to the incident of marpit.

16- After going through the evidence of the above eye witnesses, I am of the considered view that the evidence of both these witnesses is contradictory with each other about the manner in which the incident of marpit had taken place and pertaining to loot committed by the accused persons. Therefore, it is held that the manner in which the injuries were sustained to the complainant are not fully corroborated by the eyewitness account adduced in the instant case and the complainant and his witness Govind Ram had reason to falsely implicate them in the case. The learned Sessions Judge has stated the possibility that the complainant sustained the injuries by fall from the Hill while moving on slippery hilly track. He was brought to the hospital and thereafter the case was concocted against the accused/respondents. I have gone through the findings arrived at by the learned Sessions Judge

and I find no illegality and impropriety in it. The conclusion arrived at by the learned Sessions Judge cannot be interfered with in this appeal.

17- For the aforesaid discussions, I find no merit in this Government Appeal and the same is liable to be dismissed.

18- The Government Appeal is accordingly dismissed. The impugned judgment and order dated 28-7-1986 passed by the trial Court acquitted the accused/respondents from the charges levelled against them, is upheld.

(B.C. Kandpal, J.)

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